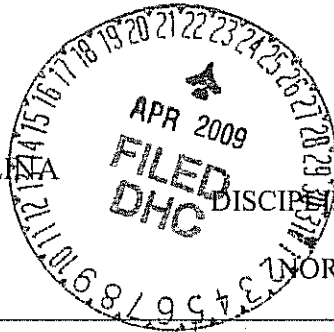


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 8

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

GREGORY C. BUTLER, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Gregory C. Butler ("Butler" or "Defendant"), was admitted to the North Carolina State Bar in 1984, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

Upon information and belief:

3. During the relevant periods referred to herein, Butler was engaged in the practice of law in the State of North Carolina and was employed as an Assistant District Attorney in the Eleventh Prosecutorial District, covering Harnett, Lee, and Johnston Counties, North Carolina.

4. In early September 2007, Butler assumed primary responsibility for the prosecution of *State of North Carolina v. Tiffany Ann Bassett*, a first-degree murder case pending in Johnston County.

5. On 25 September 2007, the court in *State v. Bassett* entered eleven orders on Bassett's motions seeking pretrial discovery, including the following orders:

- a. Order on Motion for Exculpatory Information (Including Impeaching Information);

- b. Order on Motion to Compel Investigating Officers to Turn Over All Information Related to the Investigation of this Case to the Prosecutors; and
- c. Order on Motion to Compel Discovery Disclosure of Statements of State's Witnesses)

6. The Court's order requiring disclosure of statements by State's witnesses found that "[t]he State has in its possession numerous interviews which the Defendant is entitled to inspect and review pursuant to NCGS 15A-903," and ordered the State to "disclose to the Defendant . . . all statements of State's witnesses as required and allowed pursuant to 15A-903."

7. The Court's order compelling investigating officers to turn over information to prosecutors provided that "all law enforcement officers in any way connected with the investigation of this case shall turn over to the prosecution all notes, evidence, and materials relating to this investigation and this case."

8. The Court's order regarding exculpatory information concluded that "[t]he Defendant is entitled to exculpatory information, including impeaching information, which may become known or within the possession of the State whether through its District Attorney or some other agent of the State, pursuant to [*Brady v. Maryland*, *United States v. Agurs*, *United States v. Bagley*, and *Kyles v. Whitley*]," and ordered the State and its agents "to produce any exculpatory information, including impeaching information, which may become known or within the possession of the State, whether through its District Attorney or some other agent of the State, as allowed by law." The Order was "continuing in nature," and the State was ordered to provide Bassett "any exculpatory or impeaching information immediately when such information becomes known to the State."

9. At a 29 October 2007 hearing in *State v. Bassett*, Butler stated to the court "We felt that we made every effort to comply with all the discovery requests and discovery orders as required by law up to this point."

10. On 2 November 2007, Bassett filed: (1) a Motion to Compel seeking production of phone records obtained by the State during the investigation, and (2) a Motion to Compel Items as Ordered, seeking production of all items the State was previously ordered to provide in discovery

11. Also on 2 November 2007, Bassett filed a Motion to Compel production of an 18 July 2006 interview of Charles L. Byrd, Jr. by a detective with the Johnston County Sheriff's Office (JSCO). The motion alleged that although the State had provided a report of a 1 August 2006 interview of Byrd by the State Bureau of Investigation (SBI), it had not provided any report of the 18 July 2006 JCSO interview.

12. At a 16 November 2007 hearing in *State v. Bassett*, Butler explained that the record of the 18 July 2006 JCSO interview of Charles Byrd had not been provided to

Bassett because it “had not been made part of the State’s investigative file,” but it was subsequently “tracked down” by an SBI agent involved in the case.

13. Butler then stated to the Court: “[W]e’re going to make sure every officer in the sheriff’s department is contacted, you know, verbally and instructed to provide—to look through their files and provide anything that they have in their paperwork or anything in their files that have to do with this case. . . . And if we find anything as a result of that search, we obviously will provide that to [Bassett].” In response, the Court stated, “The statements are to be furnished within 14 days.”

14. At the 16 November 2007 hearing, Butler made the following representation to the Court regarding the phone records sought in Bassett’s 2 November 2007 motion to compel: “[Defense counsel] has all the telephone records that were searched, all the numbers and all that was searched by the SBI and all the records that we received.”

15. At a 30 November 2007 hearing in *State v. Bassett*, defense counsel renewed his request for the phone records sought in Bassett’s 2 November 2007 motion to compel by noting “I do think that [the SBI agent] has the phone records somewhere, somebody has them. . . . I want to certainly give him the opportunity to check into that.”

16. At a 3 January 2008 hearing in *State v. Bassett*, Butler stated to the Court: “I will say again on the record that [defense counsel] has all phone records that have been produced by—through any investigation of the State and that we have provided him everything.”

17. At a 12 February 2008 hearing in *State v. Bassett*, Butler made the following statement to the Court regarding defense counsel’s requests for discovery: “He has [sic] everything by middle or late December.”

18. On or about 12 March 2008, Butler provided Bassett with “the complete prosecution file” of the JCSO, which contained the Crime Scene Investigator’s (CSI) handwritten notes from the crime scene, several handwritten reports of witness interviews, and phone records obtained by law enforcement in the course of the investigation.

19. The handwritten notes of the CSI were exculpatory and/or impeaching in that they contained information about livor mortis which was not included in the CSI’s typed report and livor mortis was germane to the time of death determination, a central issue in the case.

20. The Court had previously ordered the State to produce all investigating officers’ notes and any phone records obtained by law enforcement in the course of the investigation.

21. N.C. Gen. Stat. § 15A-903(a)(1) required Butler to “[m]ake available to the defendant the complete files of all law enforcement and prosecutorial agencies

involved in the investigation of the crimes committed or the prosecution of the defendant.”

22. “Complete [law enforcement] files” as defined by N.C. Gen. Stat. § 15A-903(a)(1) include:

- a. witness statements,
- b. investigating officers’ notes,
- c. results of tests and examinations, and
- d. any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant.

23. Butler's failure to timely provide the CSI's handwritten crime scene notes, officers' handwritten reports of witness interviews, and phone records obtained by law enforcement in the course of the investigation to Bassett was in violation of N.C. Gen. Stat. §15A-903, and the Court's orders on discovery.

24. On 18 March 2008, the day jury selection was scheduled to begin in *State v. Bassett*, defense counsel informed the Court that he had received new discovery materials from Butler on 12 March 2008.

25. Due to the untimely disclosure of evidence to the defense, the Court concluded that the trial had to be continued, and entered an order setting forth findings of fact.

26. The following were among the Court's findings of fact in the 18 March 2008 Order:

- a. “Defendant was prejudiced by the late and untimely disclosures.”
- b. “This Court and the staff . . . had a reasonable expectation that the resources set aside for the trial of this matter would be done so reasonably and expeditiously. The State of North Carolina has failed those expectations miserably.”

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Butler violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By failing to timely provide the CSI's handwritten crime scene notes, officers' handwritten reports of witness interviews, and phone records obtained by law enforcement in the course of the investigation to Bassett, Butler failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party and failed to disclose evidence or information that Butler knew, or reasonably should have

known, was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions, in violation of Rule 3.4(d);

- (b) By failing to ascertain the contents of the JCSO file and failing to timely provide the complete JCSO file to Bassett, Butler failed to make a reasonably diligent inquiry and failed to make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions in violation of Rule 3.8(d);
- (c) By making untimely disclosure of evidence to the defense and thereby delaying the trial and wasting judicial resources, Butler engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

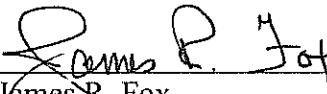
WHEREFORE, Plaintiff prays that:

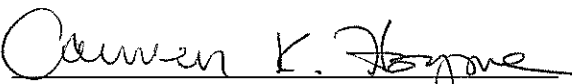
(1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;

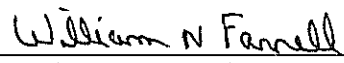
(2) The Defendant be taxed with the costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

The 23 day of April, 2009.


James R. Fox
Chair, Grievance Committee


Carmen K. Hoyme, Deputy Counsel


William N. Farrell, Deputy Counsel

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